

In re Patent Application of
GRIFFIN
Serial No. 10/784,858
Filed: FEBRUARY 23, 2004

REMARKS

Applicant thanks the Examiner for the thorough examination of the present application. The claims are believed patentable for the reasons presented in detail below.

I. The Claimed Invention

Independent Claim 1, for example, is directed to a cellular communications system comprising a plurality of mobile cellular communications devices each associated with a respective user, and a cellular base station for wirelessly communicating with the plurality of mobile cellular communications devices. The cellular base station has a capacity associated therewith. The cellular communications system also comprises a central station for determining available capacity of the cellular base station based upon active wireless communications with the mobile cellular communications devices. The cellular communications system further comprises a subscription server for cooperating with the central station to provide non-real time subscription data to users on respective mobile cellular communications devices via the cellular base station when the determined available capacity thereof is greater than a threshold.

Independent Claim 10 is directed to a similar cellular communications system. Independent Claim 17 is directed to a related subscription server, and independent Claim 23 is directed to a related method.

II. The Claims Are Patentable

The Examiner rejected independent Claims 1, 10, 17, and 23 based upon U.S. Published Patent Application No.

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2004/0078274 to Aarnio in view of U.S. Published Patent Application No. 2003/0092421 to Dolwin. Aarnio is directed to a system for providing on-line subscription services from a subscription server to a user of a mobile terminal through the Internet. The subscription server receives from the mobile terminal user-specific information relating to the user's mobile terminal capabilities, the user's preferences of products, and the user's financial information. The subscription server sends to the mobile terminal locally or remotely retrieved information related to a product based on the user-specific information. The subscription server receives from the mobile terminal a request indicating whether the user wishes to either cancel or purchase the product. The subscription server cancels the product when the user so indicates, and downloads the product to the mobile terminal when the user desires to purchase the product. See, e.g., paragraph 0009-0015 of Aarnio.

While the Examiner correctly acknowledges that Aarnio fails to teach or fairly suggest a subscription server for cooperating with said central station to provide non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station when the determined available capacity thereof is greater than a threshold, he contends that Dolwin provides this noted deficiency. Dolwin is directed to a mobile phone network including an operation and maintenance centre (OMC) for collecting statistics from base stations to determine the extent of an available network capacity being used throughout a day. Upon identifying a time of low traffic capacity, streamed media data may be sent to a mobile communications

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device at that time over the mobile phone network. See, e.g., paragraph 0013 of Dolwin.

It is respectfully submitted that the rejection of the above-noted independent claims is improper, as there is no proper motivation or suggestion to selectively combine the references as the Examiner proposes. In particular, the Aarnio system sends product information to a mobile terminal based upon the user-specific information provided by the user. One component of the user-specific information is a predetermined time period that the user wants the information delivered. The subscription server then retrieves and transmits the product information to the mobile terminal at the predetermined time period. See paragraphs 0022-0023 of Aarnio.

On the other hand, the Dolwin system seeks to identify times of low traffic across the radio interface, and avoid sending streamed media data other than during such low traffic times. See, e.g., paragraph 0019 of Dolwin. Thus, if one were to attempt to selectively implement the Dolwin scheme within the Aarnio system, in some circumstances product information may not be delivered to a user at the predetermined time period, as the Dolwin scheme would postpone the delivery of such traffic if there was not "low traffic" at the time of the predetermined time period. Yet, this would render the Aarnio system unsatisfactory for its intended purpose of sending product information data to a user based upon the user's specific preferences, i.e., at the time the user requests it. Moreover, this would impermissibly change the principle of operation of the Aarnio system. As such, there can be no proper suggestion or motivation to combine the references as the Examiner proposes. To find otherwise would

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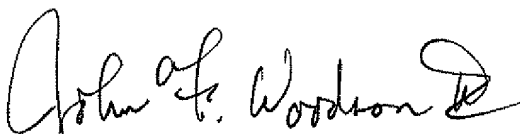
require the impermissible use of the Applicant's own specification in hindsight as a template or roadmap to piece together the teachings of the prior art.

Accordingly, it is respectfully submitted that independent Claims 1, 10, 17, and 23 are patentable over the prior art. Their respective dependent claims, which recite still further distinguishing features, are also patentable over the prior art and require no further discussion herein.

CONCLUSION

In view of the arguments presented above, it is submitted that all of the claims are patentable over the prior art. Accordingly, a Notice of Allowance is respectfully requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,



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